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PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 14th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 12 August 1993, at 10 a.m.

Chairman: Mr. AL-KHASAWHEH

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The meeting was called to order at 10.20 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 6) (continued) (E/CN.4/Sub.2/1993/12-14; E/CN.4/Sub.2/1993/37; E/CN.4/Sub.2/1993/NGO/3 and 5)

FREEDOM OF MOVEMENT (agenda item 18) (E/CN.4/Sub.2/1993/17)

1. The CHAIRMAN said that although the preliminary study on the human rights dimension of population transfer, including the implantation of settlers and settlements (E/CN.4/Sub.2/1993/17) came under agenda item 7, it might be more appropriate to discuss it under agenda item 18, Freedom of movement.

2. Mr. RAMLAWI (Observer for Palestine) said that the Sub-Commission had already heard many speakers describe cases of human rights violations by the occupying forces in the occupied territories. Every day, Israeli forces were torturing, killing and detaining Palestinians, were engaged in collective punishment, forced deportations, murdering children, forcing women to undergo abortions, and seizing land, all of which practices violated international law and more particularly the Fourth Geneva Convention and directly contravened resolutions adopted by the General Assembly, the Security Council and the Commission on Human Rights.

3. Between February and May 1993 alone, the Israeli occupying forces had killed 102 Palestinians, injured more than 750, detained 1,237 and had forced 18 women to undergo abortions. On 17 December 1992, they had deported 418 Palestinians. They systematically destroyed property, using heavy artillery and rockets to demolish Palestinian houses even when the inhabitants were still inside. The decision by the Israeli Government to close the occupied territories in March 1993 had been described by the President of the International Committee of the Red Cross as a collective punishment. Successive reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories had confirmed practices such as the torture of detainees during investigation or imprisonment. The report of the United Nations Secretary-General to the Security Council (S/25149) confirmed Israeli violations of the Fourth Geneva Convention and referred to Israel's refusal to accept Security Council resolution 799 (1992) concerning the deportations in December 1992.

4. Feeling was growing throughout the world that the credibility of the Security Council was being undermined by its failure to put pressure on Israel to accept its resolutions. The Special Rapporteur on extrajudicial summary or arbitrary executions had addressed numerous letters to the Israeli Government on that subject but had not received any answer by the time he had prepared his report (E/CN.4/1993/46).

5. The international community was indeed facing a bleak future if it allowed countries such as Israel to get away with crimes it committed openly without being reprimanded or punished. It would be even bleaker if the so-called new world order was established in the Middle East and indeed

through the world because of Israel's strategic partnership with the master of that new world order. The international community must, through the Sub-Commission and other organs, make every effort to improve and enhance respect for human rights particularly in areas where human rights violations were a systematic policy by which aggressors planned to reach their objectives, as was the case in occupied Palestine.

6. The world had waited a long time to see a peace process which would result in a durable, lasting Middle East peace settlement and it was extremely important that negotiations to that end should be linked to the acceptance of United Nations resolutions on Palestine. However, it seemed that the United States of America wished to impose a settlement which had nothing to do with international legitimacy and justice but was rather intended to serve the interests of its ally, Israel, in such a way that an Israeli presence in the occupied territories would be guaranteed and a level of stability ensured in the region so that oil supplies could flow freely. After 10 rounds of negotiations it was clear that Israel had no intention of withdrawing from the territories it had occupied by military force or of giving the Palestinian people their inalienable right to self-determination. It had not even refrained from flagrantly violating human rights. Indeed, Israel intended to make the Palestinians pay a price for the right to sovereignty, independence and freedom that would be unacceptable to any people in the world.

7. The United States of America had intervened in the ninth and tenth rounds of negotiations with proposals that coincided with Israel's objectives; that meant that the United States could no longer be regarded as the unbiased sponsor of the negotiations and had increased the bitterness of the Palestinian people.

8. In conclusion, Israeli intransigence, backed up by American bias, had increased tension. Such attitudes would not lead to a lasting and durable peace in the Middle East. The international community had a pivotal role to play in the peace process and, if the worst came to the worst, it should refuse to accept an imposed solution.

9. Mr. KOECHLER (International Progress Organization) said that on numerous occasions his organization had pointed to the illegality of Israel's occupation practices in the West Bank, the Gaza Strip, and in the South of Lebanon. In its report of 25 February 1993 on the human rights situation in the occupied Palestinian territories, it had referred to the illegal deportations of more than 1,500 Palestinians since 1967.

10. It wished now to draw the attention of the Sub-Commission to the collective deportation on 17 December 1992 of 415 Palestinian men to the no-man's land alongside Israel's self-declared security zone in Lebanon. The men, including the heads of households containing about 5,000 people, had been transported blindfolded to an inhospitable mountain area just below the snow line and most of the deportees had still not been allowed to return. It was an illegal action that once more demonstrated Israel's atavistic method of collective punishment and disrespect for its obligations under international law, and in particular the Fourth Geneva Convention. That was confirmed by

Security Council resolutions 681 (1990) and 799 (1992), Commission on Human Rights resolution 1993/2B and the 1945 Charter of the International Military Tribunal established at Nuremberg which had declared deportations to be a crime against humanity.

11. In spite of many appeals and humanitarian interventions, in particular by the United Nations Under-Secretary-General James Jonah, Israel had refused to allow the repatriation of the deportees, who had been forced to live in very harsh conditions in winter without shelter and without proper humanitarian assistance. Many of the deportees had developed serious health problems as a result of those conditions and in several instances Israel had even refused to allow them urgent medical assistance. Israeli occupation troops and militia under their control repeatedly threatened the unarmed deportees with shellfire and prevented them from returning home. Following the recent large-scale Israeli military attack in the south of Lebanon, the situation of the deportees had seriously deteriorated. They had been caught in the middle of the bombing without any kind of protection and their supply lines had been cut off.

12. Eight months after their brutal deportation, most of the Palestinians were still living in tents, nearly forgotten by the international public. His organization therefore urged the Commission on Human Rights, through the Sub-Commission, to propose effective measures to the Security Council in order to ensure the repatriation of all deportees. Coercive measures on the basis of Chapter VII of the Charter of the United Nations including economic sanctions, would have to be considered in order to implement Security Council resolution 799 (1992) and to induce Israel as the hostile occupier of Palestinian territory to abide by the rules of international humanitarian law. His organization also wished to draw the attention of the Sub-Commission to the fact that the Palestinians had been deported mainly on the basis of their political and religious convictions and/or of their political affiliation.

13. It should be noted that following the recent military operation against the south of Lebanon, Israeli leaders had declared it their policy to force hundreds of thousands of Lebanese civilians to flee from their towns and villages. Such tactics clearly demonstrated that Israel was not at all prepared to respect its obligations under international conventions. As long as Israel refused to implement virtually all of the United Nations resolutions on Palestine and in the absence of proper enforcement resolutions by the Security Council, the United Nations system had a special responsibility to ensure respect for the basic standards of international humanitarian law in order to protect the civilian population which was forced to live under the yoke of occupation. It was the duty of the Commission on Human Rights to expose such a deliberate policy of expulsion of the native population from its homeland and to remind the member States of their collective responsibility to stop that kind of collective punishment. In that regard, the International Progress Organization highly appreciated Commission resolution 1993/2B. It also deemed it appropriate that the Commission should further urge the Security Council to use all necessary means within the legal framework of Chapter VII of the Charter of the United Nations in order to bring about the repatriation of all deportees.

14. Mr. BERNARD (International Federation of Human Rights) said that his organization welcomed the importance given once again by the Sub-Commission to the question of freedom of movement, since it was a fundamental right which was violated often and in many ways.

15. One form of violation was that of restricted movement. For instance Professor Degni-Segui of the Abidjan law faculty and President of the Côte d'Ivoire Human Rights League, had been prevented in July 1993 for the fourth consecutive time from leaving his country when he was due to lecture at the International Human Rights Institute in Strasbourg. Similarly, the Greek Nationality Code discriminated against members of the Turkish minority who were deprived of Greek nationality when they left their country with "the intention" of not returning.

16. Another form of violation of the right to freedom of movement could be described as forced movement, as in the case for millions of fugitives who were waiting for a State to grant them refugee status. It was also the case of those who, like the Togolese lawyer Mr. Degli, President of the Togolese Human Rights League, were harried in exile by the Security Services of their country of origin and obliged to keep continually on the move.

17. The Federation was also concerned by more complex forms of violations of the freedom of movement. The arrangements in the European Community concerning the freedom of movement of individuals within the Community gave rise to serious discrimination against persons who were not nationals of the Community.

18. Individuals residing legally within the Community but who were not nationals of a member State were restricted to the territory of the State, in which they were legally resident.

19. The legal basis was the following. The Treaty of Rome defined the internal market as a space without borders in which the free movement of individuals was guaranteed and the Treaty on European Union was even more precise since it accorded the right to move and to reside freely throughout the Community to any individual having the nationality of a member State. Anticipating the realization of the internal market in the context of the free movement of individuals, some member States had negotiated the Schengen Agreement, which stated that foreigners in possession of a valid residence permit for one of the States could not move freely on the territory of the other States in the Schengen Zone for a period in excess of three months. Furthermore, the implementation of that principle was accompanied by a condition stipulating that foreigners resident in a member State of the European Community were obliged to notify the authorities of other territories they had entered. One of the negative consequences of those provisions was the possibility that the practice of discriminatory identity checks would develop in States in the Schengen Zone, in respect of individuals whose physical appearance suggested that they were of foreign origin, on the pretext of ensuring that the three-month time-limit was respected.

20. The admissibility of distinctions between Community nationals and non-Community nationals should depend upon whether they were objectively justified and whether they were in proportion to the intended objective. Such was the spirit of the non-discrimination principle contained in article 7 of

the Universal Declaration of Human Rights and article 26 of the International Covenant on Civil and Political Rights and reaffirmed by the European Court of Human Rights. The European Commission and the European Parliament had grasped the danger of establishing a two-tier system of freedom of movement for individuals, but there was an ever-increasing discrimination between Community nationals and citizens of third countries which had now been confirmed, in contradiction of the international commitments of member States of the Community.

21. The Federation had alerted the Sub-Commission at its forty-first session to the dangers to the exercise of the right of asylum by the construction of closer European union, since the establishment of the freedom of movement of individuals went hand-in-hand with the adoption of measures restricting access to the Community by persons seeking refugee status, and increased the risk of expulsion in contravention of the Covenant relating to the Status of Refugees. It had also drawn the attention of the Sub-Commission to the extraterritorial consequences of measures such as the extension of visas and penalties imposed on air and sea carriers which it considered to be totally incompatible with the right of individuals to leave any country, particularly when they affected people fleeing persecution.

22. The Federation was currently particularly concerned by the most recent developments in the harmonization of policies in that field which served to restrict even further the implementation of the Convention relating to the Status of Refugees. Firstly, the use of the concept of "safe countries" was open to criticism, since it implied the implementation of an accelerated procedure, which did not offer the guarantees required by the Convention and by the Office of the United Nations High Commissioner for Refugees. That concept was even less acceptable when it was based on the rate of recognition of refugee status to persons from the country in question during the previous year. Similarly, the distinction made between "normal" requests for asylum and requests described as "manifestly ill-founded" also resulted in accelerated procedures. Thus, the practice of shifting the burden of proof to the detriment of the asylum-seeker was strengthened. The application of the doctrine of "third country of reception" completed the restrictive set of provisions by authorizing member States of the European Community to return asylum-seekers to the countries of transit in which they might have made their application for asylum and from which they could not be expelled under article 33 of the Convention relating to the Status of Refugees. It was a doctrine that deprived the asylum-seeker of the choice of State in which he or she would seek asylum and also meant that the countries of central and eastern Europe would have to foot the bill for restrictions that the member States of the European Community had chosen to impose on the exercise of the right to asylum.

23. It was a complex, serious and controversial situation. One of the main reasons for it was the attitude of the member States whose concerns were far removed from their international commitments to human rights. In order to be able to respond better to the challenges posed by closer European union, the International Federation of Human Rights had opened a permanent office in 1992 in Brussels. NGO initiatives should be supported by the international community. The reinstatement of freedom of movement on the Sub-Commission's

agenda was a first step in that direction. The Federation hoped that the contemporary manifestations of violations of that freedom would be the subject of an in-depth study which would lead to the formulation of recommendations to the Commission on Human Rights.

24. Mrs. SCHERER (Amnesty International) said that the large-scale expulsions which had taken place in the former Yugoslavia were the best-known contemporary example of a situation which the United Nations human rights bodies should study in an effective and systematic way. For that reason, the issues of forced exile, the forced resettlement of populations within a country and large-scale expulsions should all be included under the agenda item.

25. Amnesty International wished particularly to highlight an aspect of freedom of movement to which the United Nations human rights bodies had not paid sufficient attention. That was the right of refugees to seek asylum and protection when fleeing human rights violations. There was an international system to protect refugees whose cornerstone was the fundamental principle of non-refoulement, as well as the Convention and Protocol relating to the Status of Refugees. Too often, however, States seemed reluctant to meet their obligations towards those who were attempting to escape flagrant human rights violations such as arbitrary detention, political assassination, torture and disappearance. Amnesty International had campaigned throughout the world to protect refugees throughout the previous year. It had intervened with regard to the insufficient protection accorded by Japan to refugees and asylum-seekers, it had intervened when the Government of Bangladesh had attempted to return Muslim Burmese refugees to Myanmar in a repatriation programme which was not wholly voluntary, and it had intervened on the subject of amendments to asylum legislation in Germany.

26. The denial of protection for refugees was general throughout the world, but Amnesty International wished to draw the Sub-Commission's attention particularly to the changes that had taken place in the United States of America and in a number of European countries, especially the members of the European Community, since it was in those countries that current policies were posing the gravest threat to the international system for the protection of refugees.

27. In May 1992 the Government of the United States had decided that Haitian asylum-seekers intercepted at sea would be forcibly repatriated to Haiti, where they had been under the jurisdiction of a military Government which, since the overthrow of the democratically elected Government, had been guilty of murdering hundreds of Haitians and of detaining and torturing thousands more. The Government's policy had been contested before the courts, but in June 1993 the Supreme Court had ruled that it did not violate domestic or international law, a decision that had been criticized by the United Nations High Commissioner for Refugees. The policy of the United States Government called into question the applicability of the principle of non-refoulement and therefore had a scope which went well beyond the United States and by no means affected Haitian asylum-seekers only.

28. Similarly, the recent measures adopted in the 12 States members of the European Community threatened long-established principles of protection. In December 1992 the Twelve had adopted criteria and procedures for dealing with "manifestly ill-founded" applications for asylum which, in the opinion of Amnesty International, ran counter to the conclusions adopted by the Executive Committee of the Office of the United Nations High Commissioner for Refugees. The Twelve had also agreed upon criteria and procedures for sending back asylum-seekers to countries outside the Community, which they referred to as "safe third countries". In many cases that would have the effect of forcing asylum-seekers to return to countries where they could not benefit effectively from a just consideration of their applications. It would also greatly overburden countries outside the Community, particularly countries in eastern and central Europe which were not in a position to cope with the sudden arrival of thousands of asylum-seekers. The Community countries were now proceeding with the preparation of common positions on the interpretation of certain aspects of the definition of a refugee as set forth in article 1 of the 1951 Convention relating to the Status of Refugees. However, at the request of some States, the High Commissioner for Refugees had already drawn up an authoritative manual on the definition of a refugee, and the States of the European Community had put forward no convincing reasons for the need to have different directives applicable to them.

29. The practice of restricting the rights of refugees was reflected in inappropriate reactions by most European Countries to persons fleeing from Bosnia and Herzegovina. Instead of cooperating to ensure that European frontiers remained open to those who fled from the horrors associated with "ethnic cleansing", the States members of the European Community and other States were requiring visas from nationals of Bosnia and Herzegovina, thereby making it even more difficult for them to flee to places where they would be really safe. The latest events in Croatia had increased Amnesty International's concern in that regard.

30. Amnesty International considered that when particularly powerful countries or groups of countries followed policies which infringed international law or allowed themselves to amend its substance or to interpret authoritative conclusions reached by United Nations bodies such as those of the Executive Committee of the Office of the United Nations High Commissioner for Refugees, the whole structure of international protection for refugees was shaken. On several occasions Amnesty International had made known its concern regarding the changes in Europe and had strongly opposed the United States policy of sending back Haitian asylum-seekers, but without meeting with any response. It hoped that the Sub-Commission would take up those matters.

31. The Sub-Commission could not, of course, duplicate the work done by UNHCR, but it could play an important role in supplementing and sustaining the latter's activities. First of all it could display its commitment to safeguarding the international system for the protection of refugees by expressing its concern regarding the actions of any Government which did not respect the fundamental principle of non-refoulement. It could indicate its anxiety regarding changes which, like those occurring in the European Community, potentially weakened the standards established for the protection of refugees. Those questions should ideally receive all the attention they deserved at the next session of the UNHCR Executive Committee, but that was

unlikely to happen unless the Governments represented in the Executive Committee were requested to act. Consequently, the Sub-Commission could usefully add its voice to the debate by expressing its concern and press the Executive Committee to make a full study of issues concerned.

32. Furthermore, it was important that the Sub-Commission should make known its desire to consider any situation in which refugees were refused protection or were forced to return to countries where their life and liberty were in danger. In recent years Amnesty International had often not been in a position to report its concerns to United Nations human rights bodies because it had been informed that there was no place for them on the agenda. To the Sub-Commission's honour, it must be noted that in the past it had considered problems relating to the human rights of marginalized groups such as minorities or indigenous populations. Amnesty International believed that it must now also seek ways and means of guaranteeing the protection of the individual rights of persons who fled in order to save their lives.

33. In conclusion, since it was essential that human rights bodies should bring pressure to bear on countries where violations of human rights forced people to flee, the Sub-Commission should request the Commission on Human Rights to take more vigorous measures to deal with such situations. The new sub-item on the Commission's agenda entitled "Human rights, mass exoduses and displaced persons" should provide a mechanism to permit the Commission to act promptly and effectively in situations in which human rights violations obliged persons to flee. The Sub-Commission should do everything possible to ensure that such a mechanism was established.

34. Mr. CHERNICHENKO said that it was a sad fact that human rights were being violated in differing degrees everywhere. Because of lack of time the Sub-Commission was unable to discuss all situations in detail or to take up all the cases that merited its attention. The possibility of preparing a comprehensive report on human rights violations should therefore not be overlooked. The idea had been repeatedly put forward but had not been acted upon. The weapons at the Sub-Commission's disposal were only moral, but they were quite powerful. The Sub-Commission could, moreover, focus on the need to prepare a methodology for measuring the degree to which human rights were being implemented in different countries. A research centre in Moscow was already working on that problem, and the Sub-Commission might be interested in its experience.

35. As a citizen of the Russian Federation he was naturally concerned about the situation there, already referred to by the representative of Human Rights Advocates, with whom he agreed. Although he had no statistics, he had the impression that at present human rights were being violated more than they had been during the period of stagnation. In particular, the kind of violation had changed. During the period of stagnation violations had been carried out on the instructions of the authorities, whereas now there were whole areas over which the Central Government had no control. The conflict between the Parliament and the Executive made the situation even more complicated. People were horrified at the increasing inflation and rampant crime. For example, at one airport in Moscow the exit was blocked by the Mafia, who levied a tax on persons passing through, in full view of the police. In North Osetia and Ingushetia the head of the local administration had been killed by terrorists.

36. Neither could the situation in other former republics of the USSR be ignored. The most dangerous one was that obtaining in Tajikistan, where there was a move towards the internationalization of the conflict. The situation in Nagorno-Karabakh was also very difficult. In 1992 he had suggested that it might merit the convening of a special session of the Commission on Human Rights.

37. The position of Russians in the former republics of the USSR was also problematic. Cases of forced emigrations were increasing. In Kirghizstan, trains carrying Russian refugees out of the republic were not being allowed to leave until the refugees had handed over money to the local Mafia, with the connivance of the police.

38. Steps should therefore be taken as soon as possible to empower UNHCR to deal with cases of internal refugees or displaced persons.

39. The human rights situation in the Islamic Republic of Iran was very serious, the appeal for the murder of Salman Rushdie having been reaffirmed. Mr. Rushdie had been accused, perhaps correctly, of affronting the feelings of Muslim believers, but the reaction was totally inappropriate. In the past no Muslim Government had ever called for the murder of a writer.

40. The Palestinians were still being deprived of their right to self-determination, and the situation of the Kurds was difficult. The latter issue was very complex because the Kurds lived in a number of different States, each of which might have a different approach to them. Neither were the Western countries free of criticism. The obsession with espionage was worrying, and the increasing xenophobia in Germany a serious source of concern.

41. There was a danger that attempts might be made to solve human rights problems through separatism. In that connection mention had been made of Kosovo and Tibet. The Sub-Commission could rightly express its concern regarding the human rights situation in those territories, but any support for separatism would only encourage armed conflict.

42. The Sub-Commission had repeatedly pointed out the need to set up some kind of mechanism to react to emergency situations. Sometimes the Sub-Commission had performed that function itself, but it might have exceeded its mandate. For some reason unknown to him the Commission on Human rights had postponed consideration of the issue. Consequently, the Sub-Commission should give serious thought to the matter, as well as to how it could improve its method of work in considering violations of human rights.

43. Mr. SACHAR said that the world could not rest on its oars in the belief that the fight for the preservation of human rights had finally been won. In the days of the cold war it had been smugly assumed that violations of human rights were the exclusive devilry of the third world or of the Communist part of Europe. Militarily speaking, the world was now unipolar, but the tragedy was that more and serious violations of human rights were taking place in the so-called first world of Europe and the United States of America, where xenophobia was on the rampage. No doubt violations of the rights of individuals and groups in various countries as documented by NGOs had been

rightly stressed, but he had looked in vain for the strong concern and condemnation of the mass violation of human rights of large segments of people of third world or ethnic origin. Was that an inadvertent omission, or was it, as some critics alleged, due to tainted priorities and biased investigation and reporting? It was important to mention that point, since it concerned the credibility of NGOs, for whom he personally had the highest regard and admiration.

44. That xenophobia was the most serious violation of human rights was beyond dispute, and the reasoning to support it was perverted. It was claimed that there was a danger of Europe being overwhelmed by foreigners. However, a report of the United Nations Population Fund estimated that from 1980 to 1992 about 15 million persons had arrived as migrants in Western Europe, which had a population of 300 million. That was called "an invasion by immigrants". In the United Kingdom ethnic minorities accounted for only 2.6 million people, half of whom had been born there - just 5 per cent of the total population. Immigrants and ethnic minorities were deprived of their human rights by being discriminated against in access to housing.

45. There seemed to be a great demand that violators of human rights should be punished by an international tribunal, but the perpetrators of the biggest case of genocide and ethnic cleansing, the Bosnian Serbs, were being fêted and allowed to keep the territory stolen by them, soaked with the blood of thousands of innocent Bosnian Muslims. The continuous bloodshed and misery in Somalia and the helplessness of the international community to stop it showed how fragile human rights were and the urgent need to find measures to preserve them.

46. The denial of human rights to women continued to be a source of shame, notwithstanding glib good intentions and even liberal laws. The burden of deprivation, poverty and violence lay most heavily on them. In most parts of the world, men refused to accord equal status to women in matters of public life, employment and decision-making. In some respects the situation was getting worse. Violence against women was abominable. It was assumed that such violence occurred only in the least developed areas and because of illiteracy and poverty, but a study in the Journal of the American Medical Association disclosed that wife-beating was becoming a common phenomenon in the United States of America. In areas of Asia and Africa women in rural and poor areas had to spend more than half of their working hours in just fetching drinking water for daily use, sometimes from a distance of four or five kilometres.

47. If the world were really concerned with human rights, it should fight for a reduction of military expenditures. In 1992, UNDP had estimated that a reduction of 3 per cent per year would release US$ 1,200 billion in industrial countries and US$ 300 billion in developing countries. The poor countries of Asia and Africa would benefit greatly if even a small portion of that sum was provided to meet the basic human needs of clean drinking water and tolerable means of communication. However, as things stood, the priorities applied in financial aid utilization were totally perverted. Only a quarter of it was earmarked for 10 countries containing three quarters of the developing world's absolutely poor. Less than 7 per cent of the total was spent on safe drinking water, basic education, primary health care and nutrition.

48. If the aid provided was properly utilized and the developed world really followed the Vienna Declaration's dictum that democracy, development and respect for human rights and fundamental freedoms were interdependent and mutually reinforcing by opening up global markets for developing countries, the latter would be able to meet their essential human needs by the year 2000. But was the developed world ready to do that? The continuation of poverty was a continued denial of human rights. Freedom of the individual could have no meaning so long as the world's poor saw no hope of improving their economic conditions. It was thus incumbent on those who claimed to be votaries of human rights to take steps in that connection.

49. The time had come to identify and give concrete shape to various human rights concepts. The absence of any concretization would only embolden States to continue to violate human rights while at the same time outwardly expressing their deep commitment to them. Only hypocrisy and cynicism would prevail.

50. He had the impression that the Sub-Commission's deliberations were being taken less seriously by violators of human rights. There seemed to be a feeling that its sessions had to be endured with a little strain but not much worry. That might be because there was no follow-up outside, either in the media or in strategic places, thus giving violators the impression that they could get away with their wrongdoings without much ado. Otherwise, how could it be explained that, even though the Myanmar army had been censured all round for preventing a duly elected leader from forming a Government, no change had taken place. The Sub-Commission should therefore give some thought to how it could make its concern regarding violations of human rights more effective. The international community must accept that a denial of human rights anywhere was a denial of human rights everywhere, and the Sub-Commission must continue to expose violations, notwithstanding the limitations and the lack of wide support in the media.

51. Mr. KHALIFA, speaking on item 6, said he believed that changing concepts and a new awareness among those working in the field of human rights justified a reappraisal of mechanisms adopted 25 years earlier, particularly the resolution 1503 procedure.

52. He recalled the success of the Sub-Commission in 1971 when it had been able to get the rules regarding admissibility adopted following a filibuster by the former expert from the Soviet Union the previous year to block the procedure. The Sub-Commission had been happy that it had finally been able to allow individuals to lodge complaints against their own Governments, in confidentiality, without involving the issues of sovereignty or non-interference. In general, at that time, States had been very jealous of the principle of non-interference and would not agree that their relations with their own subjects or citizens should be the business of international law.

53. Currently, the whole concept was being seriously challenged in line with the promotion of the idea of a softer sovereignty. The Sub-Commission could not possibly therefore keep a device which had been surpassed, at least de facto, and continue to work under confidential procedures when in fact

there was no need for confidentiality or indeed when confidentiality no longer existed. States were now scrutinized and attacked in broad daylight for alleged violations of human rights upon the complaints of individual citizens.

54. It had become clear in recent years that the great majority of communications related to cases of unlawful detention, torture and inhuman treatment; in fact such matters were dealt with under other items, such as item 6. There was accordingly no reason whatsoever to require confidentiality in dealing with them. There was no difference whatever between cases dealt with under item 6, under other items or under the resolution 1503 procedure.

55. Since its inception the system had been readily used by non-governmental organizations which had furnished very well researched reports. Individuals who had been intended to be the prime beneficiaries had not been so fortunate. Only well-researched communications were selected for submission to the Sub-Commission and such research was generally beyond the reach of individuals; moreover individual grievances did not usually constitute the required consistent pattern of gross violations. Often only one offence was cited.

56. What he had said did not necessarily represent his final views; his purpose had been to invite the Sub-Commission to review the whole procedure, and decide whether it had outlived its usefulness. A further relevant point was that a number of very competent staff of the Centre for Human Rights were required to perform the vast amount of work required by the 1503 procedure. If those staff members were released from that task they would be able to reinforce other aspects of the work of the Centre.

57. Mr. GUISSE said that he could not agree with Mr. Khalifa and was totally opposed to conducting discussions on or under the 1503 procedure in public. The system might have certain shortcomings but those should be discussed in private.

58. He then said that he would like to focus, under item 18, on the issue of freedom of movement and the right to stay in one's own country. Those rights had been stripped of all meaning and were completely ignored by a number of countries. Alarming information concerning the fate of displaced persons continued to be received on an increasing scale.

59. No country fully respected those rights and the immigration policies of certain Western countries conflicted with them. In many countries the exercise of the right to leave one's country and return to it was frustrated by endless red tape. The borders of many countries were closed. The combination of circumstances meant that, notwithstanding the relevant provisions of the Universal Declaration of Human Rights, nobody could travel as he wished. Each country was free to regulate the travel and stay of foreigners within its borders but it must comply with international norms and respect the international undertakings which it had assumed; that had been the basis of international relations since Roman times.

60. There was another aspect to the right of freedom to stay in one's own or in a host country. The right of a person to stay in a country also meant that that person must be afforded protection to live freely in that country. The right to residence was useless if, as in Bosnia, it was equivalent to suicide.

61. In conclusion, he reiterated that the right to freedom to enter and leav and freedom to stay in a country had become null and void. The international community must do everything possible to ensure that international norms were once more respected. All United Nations agencies must become involved in the issue.

62. Mr. BOUTKEVITCH said that information received by the Sub-Commission under item 6 had made it possible for members to take more clearly defined positions on other items. Item 6 was the cornerstone which underpinned all other activities.

63. In its consideration of the activities of State organizations in different countries, the Sub-Commission had discussed primarily illegal activities which threatened human rights carried out, inadvertently or deliberately, by the executive organs of the State, including the police. It had given less attention to judicial and legislative actions which prevented the effective implementation of human rights.

64. Many national laws which were incompatible with international human rights standards had been enacted, particularly during the previous two or three years. Members of legislative bodies were frequently elected on the basis of their activities against the previous regime. Many lacked adequate legal experience; different versions of human rights were to be found in such legislative bodies. It was difficult to determine whether such activities were the result of evil intentions, lack of knowledge or incompetence. Greater attention must therefore be devoted to analysing national legislation and mistakes incorporated in it.

65. If a State did not wish to change laws which conflicted with human right it might be because the State had concluded that national human rights standards were no worse than international norms and that there was accordingly no need to adhere to new covenants or conventions.

66. Many east European countries tended to favour accession to new instruments. The extent to which those countries disseminated the human rights provisions of those instruments and the ease with which citizens could obtain the information were very important for their enjoyment of human rights. A further difficulty was that the authorities frequently did not implement human rights provisions in the way in which they were set out in th relevant convention.

67. He had concluded that the norms of human rights legislation in newly independent countries tended to be compulsive, involving prohibitions and obligations, rather than permissive and mindful of the individual. That tendency had an important impact on the status of the individual.

68. The individual was given very little consideration in the definitions contained in the national legislation which had been adopted by the eastern European countries. In one case, a single article had contained 32 definitions, so that it represented an encyclopedia of legal information rather than legislation. Frequently too laws were stuffed with political slogans and ignored the individual. It was admitted by many that the law in those countries was not working at all with the result that it was of little

or no use to citizens for claiming the rights stipulated in conventions. The excuse given by the authorities was that there was legislation on the books which gave the individuals protection for their rights. A further problem was that such laws provided for no recourse against the State.

69. The situation in regard to violations of human rights in those countries must therefore be given special attention by the Sub-Commission, both as regards the legislation itself and the machinery for its implementation. The recommendations of the Sub-Commission could be helpful to those countries which should not therefore fear its intervention.

70. Mrs. PALLEY said that Mr. Khalifa had quite rightly singled out the 1503 procedure, its relationship to agenda item 6 and so on. He was quite right in saying that the Sub-Commission had to reconsider the 1503 procedure. Now, however, was not the time. She personally thought the procedure was an absolutely invaluable instrument for improving human rights, and one which could be improved a great deal by making it a more effective mechanism for dialogue. Mr. Khalifa was wrong in thinking that a number of staff members would be available for other duties if the 1503 procedure was disbanded; in fact, all that work was done by two permanent staff members assisted by interns.

71. She had requested the Secretariat to prepare a working paper for the Sub-Commission on the way in which the Commission on Human Rights, without changing procedures, coordinates its voting on item 6 and the 1503 procedure as to timing, in order to avoid getting into problems of double jeopardy.

72. Turning to other matters, she said that she intended to move a motion, inter alia referring to events in Bosnia and Herzegovina, calling on States to observe their duties under the Convention on the Prevention and Punishment of the Crime of Genocide, namely, their duty to establish machinery to try persons who had committed genocide. It was essential that those guilty of such crimes were confined to their own countries. It was timely to remember the case of Mr. Ian Smith who could not go outside Rhodesia because he had committed murder; he had hanged certain persons who had been pardoned by H.M. the Queen. A warrant had been issued for his arrest but, the Foreign Secretary at the time, Dr. David Owen, had arranged for a nolle prosequi that allowed him to attend negotiations in London.

73. There was what she considered to be an extremely unfortunate and important gap in international machinery, namely the question of how the international community could assist in solving international human rights disputes without improperly intervening, and take action before human rights violations escalated during conflicts. A new institution was needed along the lines of a High Commissioner for Good Offices to report to the United Nations General Assembly. Such offices should be available to all concerned parties at all times without prejudice to their positions. Their positions often stood in the way of sensible dialogue. States, and groups within them, did not talk as that would involve taking attitudes or claims to a particular status, in particular in cases where there was a potential claim to self-determination lurking in the background. The good offices of the Secretary-General did not provide an appropriate mechanism, as he was far too close to the Security Council. The good offices machinery was a bureaucracy

which had particular political views on particular questions acquired in the course of time by being close to the Security Council. Independent machinery was therefore essential to resolve differences before they escalated.

74. She was concerned about the difficulties that had arisen in so many States facing problems related to terrorist or separatist movements. It seemed that problems were exacerbated by the laws passed by States to deal with the situation. States were giving far too wide an interpretation to what was permissible restrictions and established permanent emergency legislation by virtue of restrictions, and discounted the need for derogation. It was perhaps time to consider seeking an advisory opinion on the propriety of restrictions rather than the necessity for a derogation. The laws of particular concern were those governing interrogation, denial of access to a lawyer, prolonged detention and search and arrest powers.

75. A further problem had come to light, in the form of excesses by the States security forces, including the army, police and paramilitary groups. States were failing to do enough to monitor and then punish security forces who were guilty of human rights violations. The problem seemed to be one of the culture that developed within security forces which themselves had been the victims of violence waged by terrorists. The Sub-Commission Working Group needed to study how such attitudes could be changed and States should be encouraged to engage in dialogue on those problems. One positive step in that regard would be to follow the somewhat belated example of the United Kingdom which had drawn up very detailed codes of practice on police and security force behaviour. The revised codes of practice were in place on the mainland but so far not in Northern Ireland.

76. Consideration should also be given to additional machinery which would help the special rapporteurs in their work. They were often refused permission to visit States. States should be encouraged to accede the right of special rapporteurs to visit. Furthermore, the reporting machinery in general of the special rapporteurs might be considered.

77. Mrs. WARZAZI pointed out that a working paper could only be prepared if authorized by the Sub-Commission.

78. The CHAIRMAN said that the Secretariat was not aware of any such request for a working paper.

79. Mrs. CHAVEZ said that she felt that she must address an urgent matter raised at the 13th meeting by Mr. Alfonso Martínez.

80. No country was above the law and accordingly, when an issue had been raised concerning human rights in her country, she had taken it with the utmost seriousness. In consequence of Mr. Alfonso Martínez's intervention, she had insisted on an explanation from her Government about the matter raised by him and had been given a synopsis of events.

81. The Pastors for Peace Organization, in November 1992, had initiated a first shipment involving a caravan of vehicles filled with humanitarian donations for Cuba, including medicines, school supplies, bicycles and parts. Those were destined for a non-governmental organization in Havana, the Martin Luther King Memorial Centre.

82. Even although United States law required an export licence for the shipment of certain items to Cuba, the Pastors had refused to request the necessary export licence but Customs and Treasury officials who happened to be present had been able to inspect the donations which were allowed to go through.

83. A further shipment arrived at United States Customs in Laredo, Texas, on 29 July 1993. She had not herself been present in the United States on that day but it was her understanding that the Pastors for Peace Organization had been invited by the Customs authorities to a planning meeting. Several loaded vehicles had been examined and their contents had been declared to be humanitarian goods so that they qualified for export. However, under United States law, the export of a motorized vehicle to an embargoed country, such as Cuba, must be considered on the basis of a formal customs application, even when its purpose was humanitarian. The Pastors for Peace had refused to apply for such a document and had then decided to engage in civil disobedience and a hunger strike and had moved into the bus to which Mr. Alfonso Martínez had referred.

84. Since then United States officials on the scene had provided a large cooler of water, an emergency team and ambulance and a portable lavatory. Attorneys for Pastors for Peace had been permitted to visit them in the bus and the Customs service was taking further steps to provide food and water to the bus.

85. The situation therefore was that the Pastors for Peace Organization had chosen not to follow the appropriate customs procedures; that was within their rights. They were free to go any time without fear of prosecution but had chosen to engage in civil disobedience. She was not sure as to the purpose of the civil disobedience and hunger strike; in the United States the purpose was usually to try to change the law. If the Pastors for Peace Organization believed that the Export Control Act or other laws applicable to Cuba were wrong, they had the right to engage in civil disobedience with a view to changing the law. It was not clear however whether that was their purpose. She was sure that the reasons why the Pastors for Peace Organization was trying to collect humanitarian items for Cuba was because of the tremendous problems that existed in that country as a result of the dire economic conditions of the people. She would hope that the organization was also engaged in a campaign against the human rights abuses which continued to go on in Cuba. Cuba had not permitted the Special Rapporteur to visit that country to get fuller and more impartial information on conditions there. It was known that the United Nations High Commissioner for Refugees had cited more than 150 cases of systematic abuse. General Assembly resolution 47/139 of 18 December 1992 on the situation of human rights in Cuba had unfortunately been greeted by the Cuban Government by a crackdown on human rights.

86. She accepted Mr. Alfonso Martínez's word that the Martin Luther King Memorial Centre in Havana was a legitimate human rights organization. She also hoped however that Pastors for Peace and other non-governmental organizations in the United States which wished to give humanitarian aid to Cuba would look to groups such as the Cuban Committee for Human Rights and National Reconciliation, the Cuban Human Rights Committee, the Cuban Pro-Human Rights Party, the Council for Civil Rights and the Cuban Democratic Convergence.

87. Mr. ALFONSO MARTINEZ replying to the observations made by Mrs. Chavez, said that he agreed that no one, in any country, was above the law. That was as true for the United States of America as for Cuba. He acknowledged the concerns expressed by her with regard to persons in Cuba who had violated Cuban law and human rights legislation. It was not fair to apply one standard to United States law and another to Cuban citizens who, if they were dissidents or considered freedom fighters, could with impunity go against Cuban legislation.

88. Turning to the question of the refusal of the Government of Cuba to allow the Special Rapporteur on the Human Rights Situation in Cuba to enter the country, he said that the Government had made its position very clear in so far as it objected to the appointment in an anomalous fashion of a Special Rapporteur as a result of political pressure. The concern for compliance with United Nations General Assembly resolution 47/139 which stated that the Special Rapporteur should be allowed to visit Cuba should be matched by encouragement of the United States Government to comply with General Assembly resolution 47/19 which stated that the principles of international law on trade were being violated by the economic blockade of Cuba.

89. With regard to the Pastors for Peace, he said that they were people of great conviction and that the continuation of the hunger strike could lead to serious problems in the future. However, he wondered why the Pastors for Peace had failed to contact other groups in Cuba apart from the Martin Luther King Centre. The Centre was not a communist or marxist organization. It was, in fact, a well-known religious centre and was evidence of the existence of religious freedom in Cuba. When serious humanitarian assistance from non-governmental organizations was addressed to it, it ensured that the assistance reached its intended destination.

90. Mr. OLADEJI (Observer for Nigeria), making a statement equivalent to a right of reply, said that an allegation had been made by Pax Christi International (E/CN.4/Sub.2/1993/NGO/3) accusing the Federal Government of Nigeria of gross and persistent violations of the rights of the Ogoni people of Nigeria. The nature and form of the violations had not been mentioned by the organization, which made it difficult to respond to the allegation.

91. A further allegation had been made by the representative of the International Commission of Jurists (ICJ) on 9 August 1993. He had requested the appointment of a special rapporteur to study what had been referred to as a steadily deteriorating human rights situation in Nigeria. His argument had been based on a wild allegation of the exercise of arbitrary power by President Babangida of Nigeria on the annulment of the presidential election on 12 June 1993.

92. All actions which had been taken by the military administration in Nigeria, with particular reference to the Transition to Civil Rule Programme, were in conformity with the responsibilities of a public authority for promoting peace and order and avoiding anarchy. It therefore needed to be emphasized that the action of the Federal Government on the annulment of the presidential election had been informed by a magnitude of irregularities and malpractices both before and during the election which had occurred in almost all the 30 States of the Federation. There were authenticated reports of

malpractices against party agents, officials of the National Electoral Commission (NEC) and many members of the electorate. The dereliction of duty and failure of officials of the NEC was of major concern. The NEC, the custodian of the integrity of the electorate and the election had failed in its duty to empathize with the mission of the Federal Military Government to fulfil the Nigerian democratic aspiration. There was proof of the abuse of the electoral process through the corruptive use of money and other forms of illegal inducement against some officials of the NEC. There was also evidence of conflict in the process of authentication and clearance of the credentials of the presidential candidates. There were other considerations which had informed the Government's cancellation of the presidential election. Voter-response, for instance did not really indicate apathy or indifference but was the corollary of confusion resulting from a court injunction which had attempted to stop the election, thereby creating an atmosphere of doubt as to whether the election would be held. The NEC had been overtly optimistic by assuring the government that the voters could be reached before polling began. Unfortunately, that optimism was ill-founded. The Administration could not also be blamed for the farce that was taking place in the law courts.

93. Many advanced democracies were very sensitive to, and rightly intolerant of, the undue influence and the use of money in national politics. Presidents and Prime Ministers had been removed because of their unethical involvement with businessmen. Others had been forced to provide explanations to their Parliaments of irregular financial contributions to party funds. Individual politicians had been called upon to explain to Parliaments, that parties or their constituency's private associations with certain financiers. Those were the standards of the democratic world and the present Nigerian administration had not derogated from those standards.

94. The presidential election had been only part of the Transition to Civil Rule Programme. Democratically-elected local government councils had been set up since 1990. Local government chairmen, legislators and supervisory councillors had taken their rightful place as the third tier of government in Nigeria. The 30 State Governments were headed by democratically-elected governors who performed executive responsibilities and were assisted by commissioners appointed by them. In addition, the State Houses of Assembly were occupied by democratically-elected legislators. At the national level, a National Assembly had been established and was made up of democratically-elected members of the Senate and the House of Representatives.

95. The present Administration was grappling with the issue of the election of a credible President so as to discourage the military from returning to power. Any new leader needed to have the blessings and respect of the entire population of Nigeria. That was the only way to avoid future anarchy that might compel the military to return to power.

96. The current hitch in the presidential election was not enough to vitiate the achievements and good intentions of the Administration in Nigeria. His delegation therefore invited the ILJ to take cognizance of the intentions of Nigeria, the peculiarities of the country and the political arrangements already instituted. In the light of the above statement, it wished to stress that there was no deteriorating human rights situation to warrant the appointment of a special rapporteur.

97. Mr. ALDOURI (Observer for Iraq), making a statement equivalent to a right of reply, said that certain NGOs, including Amnesty International, were exaggerating the statistics and evidence relating to Iraq. They were relying on sources which were known to be hostile to Iraq. Such organizations should guard against selectivity and bias and maintain the objectivity which gave them credibility.

98. He was sure that Amnesty International and other organizations were aware of the fact that certain groups of people and neighbouring countries were waging terrorist actions against the local population and Government of Iraq and setting the scene for political conflict. Organizations should consider the suffering of the people of Iraq as a result of the embargo against the country. They should also consider the treatment of Iraqi prisoners and their families in the Islamic Republic of Iran and Saudi Arabia. The information allegedly concerning large-scale assassinations should be provided so that Iraq could clarify the situation. With regard to the Kurds, non-governmental organizations should look at the events taking place in the zone under international protection.

The meeting rose at 1.05 p.m.